UNITED
NATIONS

AT

Administrative Tribunal

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16 November 1990
ENGLISH

ORIGINAL: FRENCH

Judgement No. 467

Case No. 523: WHEELER

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Arnold Kean, President; Mr. Roger Pinto, First Vice-President; Mr. Jerome Ackerman, Second Vice-President;

Whereas, on 2 August 1989, Patricia M. L. Wheeler, a former staff member of the Registry of the International Court of Justice, filed an application which did not fulfil the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 21 September 1989, the Applicant, after making the necessary corrections, filed an application against the Secretary-General of the United Nations, the pleas of which read as follows:

"The Tribunal is requested:

- to find, according to article 2(4) of its Statute, that it has competence to entertain the application;

- to order, as a preliminary measure under article 7, paragraph 3(a), of its Rules, production of the record of decisions on staff appointments made by the International Court of Justice at its session of February 1988;

- to rule that the Applicant was, at all material times, a staff member of the Secretariat of the United Nations;

- to rule that the Court's administrative decision of 14 June 1988 on the Applicant's internal appeal against termination of her employment was invalid on procedural and substantive grounds;

- to find that the Applicant had a legal expectancy of continued employment on a permanent basis in the Registry of the Court after the end of her second fixed-term contract on 31 December 1987;

- to find that the Applicant was unlawfully denied consideration for appointment to a vacant post in the Registry of the Court;

- to rescind the contested administrative decision and to order the Respondent to compensate the Applicant for the loss of her United Nations employment in a manner and in an amount to be determined by the Tribunal."

Whereas the Tribunal considered that the file was sufficiently complete and that there was no need to refer the matter to the Respondent.

The Tribunal, having deliberated from 13 to 16 November 1989, now pronounces the following judgement:

I. Under article 2 of its Statute, the Tribunal is competent to hear and to pass judgement upon applications alleging non-observance of the contracts of employment of staff members of the Secretariat of the United Nations or of their terms of appointment. The applications must be directed against decisions by the Secretary-General of the United Nations taken in respect of such staff members.

II. The Applicant was recruited on 3 March 1986, by the Registrar of the International Court of Justice under a fixed-term contract ending on 31 December 1987. On 4 December 1987, the Registrar confirmed to her that her contract would expire on 31 December 1987.

III. The Tribunal takes note that the Secretary-General of the United Nations was not involved at any point in the recruitment of the Applicant, in the execution of her contract or in the notification of the expiration of the contract. The Applicant cites no decision by the Secretary-General against which her application is directed. The Tribunal therefore is not competent to take it up.

IV. The Tribunal is aware that it could be given competence to hear disputes between the Registrar of the Court and the staff of the Registry by agreement between the Court and the Secretary-General. Only one agreement has been made in a specific case. By an exchange of letters dated 26 February and 3 April 1981, between Sir Humphrey Waldock, the then President of the Court, and the Secretary-General, it was agreed:

> "that even though the members of the staff of the Registry are not covered by article 2, paragraph 1, of the Statute of the Tribunal, they are considered, for the purposes of all provisions of the Regulations of the United Nations Joint Staff Pension Fund, including article 49, staff members of the United Nations."

V. For the foregoing reasons, the Tribunal finds that it has no competence.

(Signatures)

Arnold KEAN
President

Roger PINTO
First Vice-President

Jerome ACKERMAN
Second Vice-President

New York, 16 November 1989

R. Maria VICIEN-MILBURN
Executive Secretary

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